

APPELLATE CRIMINAL

Before Mr. Justice Dixit and Mr. Justice Vyas.

STATE *v.* ARDESHIR HORMUSJI BHIWANDIWALA.

1955
Dec. 10

Factories Act (LXIII of 1948), s. 2, Clauses (k), (i) and (m)—Salt Works at Wadala—Whether site of Salt Works ‘premises’—Whether salt made as a result of ‘manufacturing process’.

The site where salt pans are located are ‘premises’ within the meaning of s. 2 (m) of the Factories Act, 1948.

Doed Hemming v. Willets,⁽¹⁾ referred to. *Emperor v. Ganpat Dattu*,⁽²⁾ distinguished.

The process of making salt out of sea water is a ‘manufacturing process’ within the meaning of s. 2 (k) (i) of the Factories Act, 1948.

APPEAL against the order of acquittal (dated Feb. 19, 1955) passed by K. J. Khambata, Esquire, Chief Presidency Magistrate, Bombay.

The facts are fully stated in the Judgment.

H. M. Choksi, Government Pleader, with *Y. V. Chandrachud*, Additional Assistant Government Pleader, for the State.

P. P. Khambatta, with *K. K. Shinde*, instructed by *Gagrat & Co.*, for the Respondent-accused.

Vyas J.—This is an appeal by the State of Bombay from a judgment of the learned Chief Presidency Magistrate, Bombay, acquitting the respondent who was charged with having committed an offence under s. 92 of the Factories Act, 1948, for breach of the provisions of s. 6 of the Factories Act, 1948, read with r. 4 of the Bombay Factories Rules, 1950. The appeal raises an important question of construction of cl. *k* (1) and cl. (m) of s. 2 of the Factories Act, 1948. The respondent is the occupier of the Wadia Mahal Salt Works at Wadala where salt is made, and the questions which have arisen before us are whether the site where the salt works are situated is “premises” within the meaning of cl. (m) of s. 2 and whether the salt is made as a result of any manufacturing process within the meaning of cl. *k* (1) of s. 2.

The respondent Ardeshir Hormusji Bhiwandiwalla is a partner in the firm of Messrs. H. M. D. H. Bhiwandiwalla & Co. who are occupiers of the Wadia Mahal Salt Works situated at Wadala, Bombay. The complainant in this case is one Mr. Bapat, an Inspector of Factories, and on July 13, 1953, he filed a complaint against the respondent. The gist of the complaint was that the respondent, who was the occupier of the Wadia Mahal Salt Works, which were a factory under s. 2 (m) of the Factories Act, had failed to submit to the Chief

*Criminal Appeal No. 817 of 1955.

1. (1849) 7 C. B. 709.

2. (1930) 32 Bom. L. R. 329.

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Inspector of Factories, Bombay State, an application in form No. 2 for the registration of the factory and for the grant of a licence as required under s. 6 of the Factories Act, read with r. 4 of the Bombay Factories Rules, 1950. The complaint stated that by reason of abovementioned contravention of the provisions of s. 6 of the Factories Act read with r. 4 of the Bombay Factories Rules, the respondent had committed an offence under s. 92 of the Factories Act .

When the case went up first before the learned Chief Presidency Magistrate for trial, he held that as the complaint against the respondent was made beyond the period of three months from the date on which the commission of the offence had come to the knowledge of the complainant, it was barred by limitation under s. 106 of the Act. Accordingly, he ordered the complaint to be dismissed. There was an appeal to the High Court by the State of Bombay against that order of dismissal and the High Court held that, so far as the failure to have the factory registered under the provisions of the Act was concerned, it was not a continuing offence and that, therefore, the complaint in so far as that part of the charge was concerned was barred by limitation at the date upon which it was filed. But, in respect of the charge that the respondent had failed to make an application for the grant of a licence to him for the working of this factory, the High Court held that the failure to apply for a licence was a continuing offence, and that a fresh offence was committed on each day upon which the factory was worked without a licence. The pertinent observations which the High Court made in that appeal, which was Criminal Appeal No. 762 of 1954, were these :

“Every day that the respondent used the premises as a factory without obtaining a licence, he was committing a fresh offence, and in respect of each fresh offence, a separate prosecution is competent. The failure of the complainant to prosecute the Respondent for the earlier offences committed by him cannot, in our opinion, justify the application of the provisions of s. 106 in support of his plea of limitation.”

Consistently with this view which the High Court took, the Court sent back the case to the learned Chief Presidency Magistrate with a direction that the learned Magistrate should deal with the second charge, viz., the charge regarding the respondent running his factory without obtaining a licence, in accordance with law.

On the case going back to the learned Chief Presidency Magistrate for disposal according to law in respect of the second charge against the respondent, the learned Magistrate came to the conclusion that no manufacturing process was done in the respondent's Salt Works, that, therefore, the Salt Works were not a factory within the meaning of the Factories

Act and that, therefore, the provisions of the Act would not apply. The learned Magistrate further held that the open land upon which these Salt Works are situated and where the salt is made were not "premises" within the meaning of s. 2, cl. (m) of the Factories Act and that, therefore, also the provisions of the Act would not apply. In dealing with the point whether there was any manufacturing process done in these Salt Works, the learned Magistrate made these observations in paragraph 27 of his judgment :

"I am of the view that in the preparation of salt by solar evaporation of sea-water, nothing is made, altered, washed, cleaned or broken up in the process. Nothing is treated. No substance or anything is required to be put into the sea water for obtaining salt. Nothing is adapted in the process. It is, therefore, not correct to say that any manufacturing process is involved, and if no manufacturing process is carried on, then there is no factory."

He proceeded to elaborate this point when he went on to observe :

"Sea water or brine is simply taken from the creek into the reservoir through a channel by gravitation only. From the reservoirs it goes into the *tapavanis* (preliminary evaporating pans); and from the *tapavanis* it goes into the crystallising pans, entirely by gravitation. The water as it comes from the sea is simply allowed to dry up by solar evaporation; the result of which is that salt crystals collect naturally as deposits. This evaporation depends entirely upon the agency of the Sun. This human agency is used to bring this about."

In other words, as the learned Magistrate thought that no human agency was employed for producing salt in these salt works, no manufacturing process was resorted to upon the Salt Works and, therefore, the works were not a factory. Then, in respect of the question whether the land upon which these Salt Works are situated and where salt is produced is "premises", the learned Magistrate said that there was no analogy between factory premises and a salt-farm or salt works. He went on to point out that the area of these Salt Works was roughly 250 acres. Then he said that in several cases the distance from one end of the salt farm to other end might be as big a distance as a mile. In the view of the learned Magistrate, this feature was more analogous to that of a large agricultural farm than to a factory as envisaged under the Factories Act. He further pointed out that these Salt Works had no fencing and no boundary walls. The different Salt pans were separated by sea water channels or by "common pathways". Then he referred to a fact that no buildings were situated upon these Salt Works apart from a shed which was capable of being used as "a sort of an office". Indeed, the learned Magistrate thought that the existence of a building upon these Salt Works would be an impediment in the operations of producing salt. In short, in the view of the learned Magistrate, the word

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'premises' in cl. (m) of s. 2 of the Factories Act would mean only buildings or "enclosures encircled by walls" and would not include open lands, like the lands upon which these salt works are situated. Accordingly, he held that these works would not amount to a factory and, therefore, the provisions of the Factories Act would not apply.

Consistently with this construction which he put on the provisions of sub-cl. (1) of cl. (k) and cl. (m) of s. 2 of the Factories Act, the learned Magistrate came to the conclusion that no offence was committed by the respondent by failing to apply to the Chief Inspector of Factories for obtaining a licence for running his Salt Works. He accordingly ordered the respondent to be acquitted of the offence with which he was charged.

For the construction of the term 'premises' in cl. (m) of s. 2, we may with advantage turn to the definition of 'premises' in s. 5, sub-s. (8) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, Bombay Act No. LVII of 1947. The object of the Bombay Act LVII of 1947 being, amongst other things, to control rents, the Legislature defined 'premises' so as to mean, amongst other things, any land not being used for agricultural purposes and any building or part of a building let separately, with a view obviously to restrain the levy of excessive rents by landlords not only in respect of buildings or parts of buildings, but also in respect of their lands. In enacting that Act, the Legislature took due account of a tendency on the part of a landlord to charge excessive or unreasonable rent in respect of his building or land and thus make profit which the Legislature thought would not be a just and fair profit. On analogous reasoning, it may justly be said that the occupier of a factory, whether the factory is situated in a building or upon an open land, would not be immune from a tendency of making an unreasonable profit for himself by taking excessive work from the workers by refusing them holidays etc. While putting the Factories Act on the the Statute-Book, the Legislature must not have been unmindful of this human failing and, therefore, in our opinion, when the Legislature used the word 'premises' in cl. (m) of s. 2, their intention must have been to include lands as well. Thus, as the Factories Act itself does not contain a definition of 'premises', it would in our opinion, be correct to derive guidance on the question as to the Legislature's intention from the definition of the said term in Bombay Act LVII of 1947.

We must proceed upon an assumption, which is a fair and reasonable assumption, that in enacting the Factories Act, the Legislature must have had in mind the welfare of the workers. Their intention clearly was to so regulate the labour as to

require the employer to pay adequate attention to the health, safety and protection of the workers. Such being the scheme of the Act, we cannot attribute to the Legislature an intention to discriminate between the workers who are engaged in a manufacturing process in a building and those who are engaged in such a process on lands. Such a discrimination would be inequitable and unfair, and to do justice to the intention of the Legislature, we must hold that it could not have intended such a discrimination. Consider for instance the provisions of s. 17 which enjoin upon an occupier of a factory a duty of providing and maintaining sufficient lighting in every part of the factory. We have it in the evidence of Mr. Bapat, the Factory Inspector, that the workers on the Salt pans, who have to admit water into the reservoirs, "Work sometimes by day and sometime by night depending upon the tide". Mr. Bapat has said that "the sea water goes into the reservoirs only at high tide." Not infrequently a high tide may set in at night or even after mid-night and in that case the workers would have to work on the pans at night. Now, is it fair, just and reasonable to attribute to the Legislature an intention that, when they enacted s. 17 regarding provisions for suitable and sufficient lighting, they wanted to discriminate between the workers working in buildings and those working on open lands on the Salt pans? It is elementary that those working on the salt pans at night would need light for their safety and convenience as would those working in buildings need. Clause (3) of s. 17 says that effective provision shall so far as practicable be made for prevention of glare by reflection from a smooth surface. It is common knowledge that the surface of the sea is smooth. It is also common knowledge that when the Sun is shining brightly and its rays contact a smooth surface at a particular angle, there is considerable glare. The rays of the sun falling upon the smooth surface of the sea in the middle of the day would give rise to a glare and we cannot be easily persuaded to agree that, while enacting cl. (3) of s. 17, the Legislature, while having regard to the protection of eyes of question of protecting the eyes of the workers on salt pans. Section 34 enjoins upon the occupier of a factory an obligation to see that no person shall be employed to lift excessive weight. The Inspector of Factories has deposed that women are employed on Salt Works and the work which they have to do is to lift baskets of salt and carry them. Can we in fairness be asked to agree that, while the Legislature had in mind on this point the welfare of the employees working in buildings and provided that they shall not be made to lift excessive weights, they intended to exclude workers on the Salt pans from the purview of this beneficent provision? Our answer

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those working in buildings, would have been callous on the must only be in the negative. Turning next to s. 35, it says that, where a manufacturing process involves risk to the eyes by reason of exposure to excessive light, the Provincial Government may by rules require the provision of effective screens or suitable goggles for protection of the eyes of the workers. As I have said, when the mid-day sun shines brilliantly upon the smooth surface of the sea, there may be excessive glare and it is clear that the eyes of the workers on the salt pans are exposed to that glare. Shall we say that the Legislature intended to exclude these workers from the benefit of the salutary provisions of s. 35? it is, we think, unnecessary to go through the various other sections of the Factories Act in such a detailed manner. Section 44 contains Provisions for sitting facilities for workers. Section 51 prohibits an occupier of a factory from requiring an adult worker to work for more than 48 hours a week. Section 52 provides for weekly holidays for a worker. Section 53 speaks of compensatory holidays when a worker is deprived of any of the weekly holidays. Section 54 says that no adult worker shall be called upon or allowed to work in a factory for more than nine hours a day, Even if a worker is willing to work longer than nine hours a day, the section says that the occupier will not allow him to do so. Section 59 contains a provision for payment of extra wages to a worker when he works overtime, that is, for more than nine hours a day or more than 48 hours a week. There is no doubt that, in enacting the abovementioned provisions of the Act, the Legislature was inspired by considerations of justice, fairness and humanity and is it a proper construction to put upon its intention to say that, whereas the Legislature intended to extend the benefit of these salutary and beneficent provisions to the workers in buildings, they intended to deny these advantages to the workers on Salt pans? Section 67 which prohibits the employment of young children, s. 69 which refers to certificates of fitness and s. 79 which makes a provision for the grant of annual leave with wages to workers are sections containing provisions for the welfare of the workers and it is impossible to accept Mr. Khambatta's contention—for indeed that would be the contention—that the Legislature of a welfare State while enacting a piece of welfare legislation for the benefit of labour intended to exclude the workers on salt pans from its purview. I have referred not to a section here or a provision there, but to as many as 14 sections of the Act, to show what the scheme of the Act is and, in our opinion, it is only consistent with the scheme that the term 'premises' in cl. (m) of s. must be so constructed as to include lands.

"The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the

subject of the enactment and the object which the Legislature has in view.....whenever a statute or document is to be construed, it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used."

(Maxwell on Interpretation of Statutes, 10th Edition, p. 52). The object of the Legislature in enacting the Factories Act was to regulate labour and the provisions of the Act clearly show that the said regulation was intended for the benefit and welfare of the workers. According to the well recognised canon of construction, therefore, the word 'premises' in cl. (m) of s. 2 must be so construed as not to deny the fruit of this beneficent legislation to the workers on salt pans. Since a manufacturing process of making salt is done on the site of these salt works as I will presently point out, since as many as 47 workers are employed in that process, since the salt which is made on this land where the salt works are situated is an article of commercial use and since the occupier is making a profit by the manufacture and sale of this salt, we fail to understand why the salt works are not a factory. In our opinion, they are a factory.

Quite a lot of useful light on the construction of the word 'premises' occurring in cl. (m) of s. 2 is thrown by a comparison of the definition of 'factory' in sub-s. (3) of s. 2 of the Factories Act, 1911, with the definition as contained in cl. (m) of s. 2 of the present Act (the Factories Act, 1948). In the Act of 1911 'factory' was defined as under :

"Factory means any premises wherein or within the precincts of which on any one day in the year not less than twenty persons are simultaneously employed and steam, water or other mechanical power or electrical power is used in aid of any manufacturing process."

The definition of a factory in the present Act is this :

"Factory means any premises including the precincts thereof (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952, or a railway running shed."

It is thus clear that in the Factories Act of 1948 the words "premises wherein, or within the precincts of which" were removed and in their place the words "premises including the precincts thereof, whereon" were substituted. This substitution must have been made with a purpose. Legislature does not do a thing without a purpose, especially when it involves changing the existing words of a statute. In our

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opinion, the purpose was clearly to include lands in the interpretation of the word 'premises'. The word 'whereon' in sub-cl. (i) cl. (m) of s. 2 would be singularly inappropriate if the premises meant were only buildings. In this connection, Mr. Khambatta has drawn our attention to the words "and in any part of which" which occur in the latter part of sub-cl. (i) of cl. (m). In our view, these words are not inconsistent with premises being inclusive of lands. They mean that a manufacturing process may be carried on in any part of the land upon which a factory may be situated.

Mr. Khambatta says that the expression "premises including precincts" would show that the legislature in using the word 'premises' intended to exclude lands. Mr. Khambatta says that the word 'precincts' is a relative word and it is used in respect of and in relation to something which is a principal thing and of which it is an appurtenance. According to Mr. Khambatta, if there is a building, it would have its precincts and the precincts would be the land around it; but, says Mr. Khambatta, if there is no building but only land, it would have no precincts. In our opinion, the expression "premises including precincts" merely shows that there may be some premises with precincts and some premises without precincts. In our view, if the term 'premises' were intended to exclude something which would have no precincts, then the Legislature would not have used the words "premises including precincts." Legislature does not use superfluous words and, therefore, in this case when they used the expression "premises including precincts", they envisaged premises which might have no precincts and those which might have precincts. Where premises are buildings, they would include precincts. Where premises are lands, they would have no precincts and there would be nothing to be included. The point is, the expression "premises including precincts" would, in our opinion, not exclude lands.

In support of the view which the learned Chief Presidency Magistrate has taken of the term "premises", viz., that this term does not include lands, Mr. Khambatta has drawn our attention to the provisions of the Factories Act contained in Chapters III, IV and V and has argued that by far the large majority of these provisions could possibly have no application to a case where a manufacturing process is carried on, on an open land and would indicate that the Legislature, while using the word 'premises' in cl. (m) of s. 2, must have had in contemplation only the places where a manufacturing process is carried on in buildings. Mr. Khambatta says that the provisions of Chapters III, IV and V of the Act would be meaningless and superfluous in cases where a manufacturing process is done on open lands. Our answer to Mr. Khambatta's conten-

tion is simple. It is of course clear that the large majority of the provisions of Chapters III, IV and V would not apply to factories where a manufacturing process is carried on an open land; but then it only means that where a factory is situated on an open land, it will not be necessary for the occupier to comply with such of the provisions of the Act with which it is not feasible to comply. Such an occupier would not be committing an offence and would not be liable to be punished under the Act if he does not comply with such of the requirements of the Act which it is not practicable for him to comply with. When there may be factories, some of which may be situated in buildings and some on open lands, the Legislature must make all-embracing provisions for the regulation of labour, some of which provisions may apply to both sets of factories and some to the one or the other set as the case may be. Where there are factories of more kinds than one, for instance, some situated in buildings and some situated on open lands, it is not necessary—and indeed it may not be possible—that all the provisions of the Act must apply to every kind of factory.

In support of his contention that the word 'premises' in cl. (m) of s. 2 does not mean and include lands, Mr. Khambatta has invited our attention to r. 3 of the rules framed under the Act and to form No. 1. Rule 3 says: "An application for obtaining previous permission for the site on which the factory is to be situated and for the construction or extension of a factory shall be made to the Chief Inspector of Factories. Application for such permission shall be made in Form No. 1 which shall be accompanied by the following documents etc. etc." Form No. 1 reads "Application for permission to construct, extend or take into use any building as a Factory," and then several columns are set out which are required to be filled in by an applicant. Mr. Khambatta contends that since r. 3 speaks of applications to be made for obtaining previous permission for the site on which the factory is to be situated and for the construction or extension of a factory and since Form No. 1, which is the form prescribed for the making of those applications, speaks of buildings only and does not mention lands, the intention of the Legislature must have been to exclude lands when they used the word 'premises' in cl. (m) of s. 2. This reasoning, in our view, is an erroneous reasoning. The correct thing to do is to reverse that reasoning. We must first have regard to Form No. 1, which is the prescribed form, for making certain applications, and then we would understand what applications are meant to be made under r. 3. The wording of Form No. 1 is, as I have just said, "application for permission to construct, extend or take into use any building as a Factory"

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and this would clearly show that the applications which are to be made in that form, that is, the applications under r. 3 must be the applications by those who wish to construct a factory in a building and, therefore, want a site for that purpose. Form No. 2 is the form which is prescribed for making applications under r. 4 and in the language of Form No. 2 we do not find any such word as 'building.' Reading r. 4 with Form No. 2, it is clear that if an occupier of a factory wants to apply for registration of the factory and for grant of a licence, he must do so under r. 4 and not under r. 3. Therefore, it is clear that when a factory is to be constructed in a building and where a site is required for the purpose, the application must be made under r. 3 and it must be made in Form No. 1. When the occupier of a factory wants to apply for its registration and grant of a licence, the application must be made under r. 4 and it must be made in Form No. 2. Thus, we regret we are unable to see force in Mr. Khambatta's contention based upon his reading of r. 3 and Form No. 1.

On a matter of construction of the term 'premises' in cl. (m) of s. 2, we may derive guidance from the words "premises or building" in sub-cl. (bb) of cl. (1) of s. 7 of the Act. If 'premises' under the Act were to mean only buildings, it would scarcely be appropriate to use the words "premises or building" in sub-cl. (bb) of cl. (1) of s. 7. It is true that sub-cl. (bb) was added by the Factories (Amendment) Act, 1954. But by an amendment the Legislature would not incorporate something in the Act which would be inconsistent with or repugnant to the object of the Act. In our view, therefore, the words "premises or building" in sub-cl. (bb) of cl. (1) of s. 7 which sub-clause was added in the year 1954, would suggest that the term 'premises' in cl. (m) of s. 2 must include lands.

In our construction of the term 'premises' in cl. (m) of s. 2, viz., that this term includes lands, we are fortified by the meaning assigned to this term by such eminent authorities as Wharton, Stroud and Burrows. According to Wharton, the term 'premises' in s. 4 of the Public Health Act, 1875, includes messuages, buildings, lands, easements, tenements and hereditaments of any tenure. According to Stroud the word 'premises' in the Workmen's Compensation Act, 1925, implies some definite place with metes and bounds, that is, land or land with buildings upon it, or a ship or anything of that kind. According to Burrows, the word 'premises' at common law in Australia includes houses or lands. In New Zealand, the "premises of a man engaged in business" may be wholly buildings or wholly land or partly buildings and partly land. In *Doe d. Hemming v. Willetts*,⁽³⁾ Chief Justice Wilde observed that the word

3. [1849] 7 C. B. 709.

'premises' was commonly used as comprising land and houses and other matters. Just as under the Public Health Act, the English Act of 1875, the term 'premises' means not only buildings, but includes lands as well, and a person is obliged to keep not only his buildings, which are tenanted by people, but also his lands where his men work, clean and healthy, so also it is fair and just to assume that, while enacting the Factories Act, 1948, the Legislature intended that the occupier of a factory, whether the factory is situated in a building or on an open land, must look to the welfare of his workers, whether they work in buildings or on lands, by keeping his buildings and lands in a proper state of cleanliness and sanitation. Just as under the Workmen's Compensation Act, 1925, 'premises' includes lands and the employer is liable to pay compensation to his employee's dependents, whether the accident to the employee in the course of his employment occurs in the employer's building or on his land, so also it is reasonable to assume that, while putting the Factories Act on the Statute Book, the Legislature intended that the occupier of a factory, whether the factory is situated in a building or on an open land, would similarly be liable if the accident occurred to his workman in the course of his employment either in a building or on an open land. As the Public Health Act of England is a beneficent legislation for the welfare of the people and as the Workmen's Compensation Act of that country is also a welfare legislation for the benefit of the workmen, so also the Factories Act is a beneficent legislation for the welfare of the labour. That being so, it is only fair and just to construe "premises" in cl. (m) of s. 2 of the Factories Act so as to have the same meaning as the Courts have given to this word under the English Acts.

Mr. Khabatta has drawn our attention to a decision of this Court in *Emperor v. Ganpat Dattu*,⁽⁴⁾ in which it was held that the word 'premises' in s. 2, sub-s. (3) of the Indian Factories Act, 1911, included all premises of a factory together with the compound in which they stood and that the word 'precincts' meant the space enclosed by walls or other boundaries of a place or buildings. It is to be noted, however, that the terms which came up for construction in this case were the terms 'premises' and 'precincts' occurring in s. 2, sub-s. (3) of the Factories Act, 1911. Sub-section (3) of s. 2 of the Factories Act, 1911, was in these words: "Factory means any premises *wherein* or *within* the precincts of which, on any one day in the year not less than twenty persons are simultaneously employed and steam, water or other mechanical power or electrical power is used in aid of any manufacturing process." In the present Factories Act (of 1948), the words are: "Factory means any

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premises including the precincts thereof (i) *whereon* ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or (ii) *whereon* twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952, or a railway running shed." Thus, the material words in the relevant sections of two Acts being different the decision in *Emperor v. Ganpat Dattu* would not afford us help in construing the word 'premises' in cl. (m) of s. 2.

In his judgment, the learned Chief Presidency Magistrate has referred to several English cases. In our view, the English decisions referred to by the learned Chief Presidency Magistrate do not give us useful help in the present case because in those cases the words which came up for construction were different. The words in the relevant provision in the English Act were "any premises.....or within the precincts of which" In one case, the English Workmen's Compensation Act, 1897, was concerned, and the words construed were "Any premises wherein or within the close or cartilage or precincts of which". In the Factories Act, 1948, of this country, the words are: "Any premises including the precincts thereof, whereon." The difference in the words being a material and substantial difference, the English decisions would not give us substantial help in construing the term 'premises' as it occurs in cl. (m) of s. 2 of the Factories Act, 1948.

Thus, on a consideration of the object of the Act, of the intrinsic evidence about the intention of the Legislature which is clear from the words "premises or building" in sub-cl. (bb) of cl. (1) of s. 7, and of the interpretation put by eminent authorities upon the term 'premises' occurring in the various welfare legislation, we are of the view that the word 'premises' in cl. (m) of s. 2 of the Factories Act, 1948, means not only buildings but includes lands as well.

Proceeding next to the question of construction of cl. (k) of s. 2 the view which the learned Chief Presidency Magistrate has taken, which is the view which Mr. Khambatta is contending for, is that no manufacturing process is done on these salt works. Mr. Khamatta says: what is done on these salt works is that a sheet of salt of water is converted into a bed of salt by evaporation due to exposure to the rays of the Sun. There is no intervention of human agency; there is no manufacturing process being done on these works, that is, no work is

being done by a human hand or by a power machinery. Salt is undoubtedly made, but it is made by nature. Sea water is a gift of nature. Heat from the rays of the Sun is also a bounty of nature. Gravitation by which the sea-water flows into the reservoir is also a natural force. It is true that when the tide is low, a pump has to be worked for drawing the sea-water into the reservoir; but that happens only twice or thrice in a month. For the rest of the days, that is ordinarily, the tidal water flows into the reservoir and the tide is also a natural phenomenon. In this way, the making of salt on these works is dependant on nature, not on men or machine, and does not, therefore, involve any manufacturing process. This is the gist of Mr. Khambatta's submissions on the interpretation of the expression 'manufacturing process' as it occurs in cl. (k) of s. 2.

We have given our careful thought to this submission. In our opinion, it is a travesty of language to say that, although 47 workmen are working on these works, salt is made without the assistance of human agency. It is true that these workmen do not add anything to, nor subtract anything from, the sea-water which produces salt from that water, but they do treat the sea-water in a particular way. When I use the word 'treat', I do not refer to chemical treatment. Several words or terms in the context of which the word 'treating' occurs in cl. (k), sub-cl. (i) would show that the Legislature did not use the word 'treating' in the sense of chemical treatment. The word 'otherwise' in the expression 'otherwise treating' would also suggest that the Legislature had in view any treatment of an article with a view to its use, sale etc. Now, in this case there is no doubt that the workmen employed on these salt works are dealing with the sea-water in a particular manner and but for the dealing with it in that manner, salt as made on these works would not be made. Workmen's dealing with the sea-water in a particular manner is the treatment, within the meaning of the expression 'otherwise treating', which the workmen are giving to the water. They are separating the sea-water from the sea, without which separation the salt as produced on these works would not be produced. This separation of the sea-water from the sea is also a treatment of the sea-water, given to it with a view to make its product an article of use, sale transport etc. within the meaning of sub-cl. (i) of cl. (k). Nobody considers sea-water as such an article of use, sale, transport, delivery or disposal, in other words an article of commercial use. Separation of the sea-water from the sea is the first step in making the product of the said water an article of use sale etc; and this very first step is dependant upon human agency. It is true that ordinarily the sea-water

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flows by gravitational force—natural force—into the reservoir. But there must be a reservoir before the water could flow into it. From the reservoir the water flows into *tapavanis* and thence into the crystallisation pans. But before the water could flow in that manner, there must be *tapavanis* and crystallisation pans. It is the workmen who make and prepare the reservoir, the *tapavanis* and crystallisation pans, without which salt as made on these works cannot be made even with the best and kindest of nature's intentions. In this context, we are not to forget that when a gravitational force is not available for drawing water from the sea into the reservoir on account of low tide, a pump has to be worked, and that is a power machinery worked by human hand. A crystallisation pan is surrounded on all sides by small embankments and this is done to separate a particular enclosed sheet of water from its immediate environments. These small embankments are also the work of human agency. The scraping out of the salt, the sieving of it for the purpose of grading the salt into crystals of various sizes, packing of it into gunny bags with a view to its transport, delivery or disposal are all done by the workmen. In these circumstances, upon a proper construction of cl. (k), we must hold that a manufacturing process is being carried on upon these salt works.

In conclusion, therefore, we reverse the judgment of the learned Chief Presidency Magistrate, hold that the Wadia Mahal Salt Works of which the respondent is the occupier are a factory and that the respondent committed an offence under s. 92 of the Factories Act, 1948, in that he failed to obtain a licence for working the salt works under s. 6 of the Act read with r. 4 of the Rules framed under the Act. We convict the respondent of this offence and sentence him to pay a fine of Rs. 25.

Appeal allowed.

G. N. V.
